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Australia: Ruling on post-termination misconduct

In a recent case, a Full Bench of the Federal Court of Australia provided clarification on when an employer can justify the summary dismissal of an employee on the basis of alleged cases of misconduct that were discovered after termination of employment.

In this case, an employee was notified that his position had become redundant. As there was no alternative position to which he could be moved, his contract of employment was to be terminated. He was informed that he would receive six months' pay in lieu of notice and 12 weeks' redundancy pay. However, after termination, the company discovered cases of alleged misconduct and, based on this discovery, determined that they could summarily dismiss the employee without pay in lieu of notice or redundancy pay.

Previously the High Court of Australia has held that the dismissal of an employee can be justified by reference to grounds that were not the original basis for the dismissal and of which the employer was not even aware at the time of the dismissal. However, in this

case, the Court confirmed that this principle (known as the Shepherd principle) does not extend to situations where a party has already had their contract lawfully terminated on proper notice. In such cases the employer does not have the right to reverse this decision if they later decide that the employee had committed misconduct which could have justified summary dismissal. In other words, an employer cannot terminate the contract a second time on a different ground of dismissal. [Melbourne Stadiums Ltd v Sautner [2015] FCAFC 20]

France: Decree clarifies obligations regarding posted workers

A decree to tackle illegal work and fraud involving posted workers has now come into force in France. The decree details the obligations placed on employers established outside of France when they wish to post or second employees to France, as well as the obligations of their representatives.

The new law reiterates the fact that employers established outside of France are required to make a prior declaration of any intended posting or

secondment of an employee to France. In particular, the law states that this must be made to the labour inspectorate in the place where the secondment or posting begins.

The law also provides further details on an employer's obligation to appoint a representative of the company in France. The role of this representative is to ensure cooperation with the competent authorities during the posting. The representative must acquire a copy of the prior declaration and the document indicating the company's in-France representative before the start of the posting, otherwise they may face a fine.

Furthermore, the decree amends the list of documents that must be available at the posted employee's place of work ready for checking by the labour inspectorate. These documents include proof that the employee is being paid at least the minimum wage and the employee's work permit, if required. The exact documents depend on the length of the posting.

Germany: Alcoholic employee entitled to sick pay

The German Federal Labour Court (BAG) recently considered whether an employer had an obligation to continue paying wages during sick leave to an alcoholic employee who had suffered a relapse.

The case concerned an employee who went on sick leave for ten months after being admitted to hospital with alcohol poisoning. He had received treatment for alcoholism twice in the past. The employer refused to pay the employee during sick leave, claiming that the employee's sickness was self-inflicted. In Germany, sick pay is only applicable for illnesses that are not self-inflicted. If an employee is injured because of an accident that took place whilst they were drunk, or under the influence of a non-prescribed drug, then no payment is required.

The BAG held that the illness was not the employee's fault and as such ordered the employer to pay the employee sick pay. The BAG found that alcohol dependence is a disease with a number of causes; therefore the blame cannot rest with the employee. This is the case even when a relapse occurs following successful treatment. [-10 AZR 99/14]

Germany: Employer ordered to reimburse work council training costs

An employer has been ordered by the Federal Labour Court (BAG) to reimburse the works council for the cost of sending one of its members to a seminar on bullying.

For many years the employer had refused to pay for the vice chairman of the works council to attend training on bullying. Eventually, however, the vice chairman did attend a seminar, despite continued refusal from the employer to pay the costs.

The seminar was considered by the works council to be particularly necessary at this time as there was a situation of bullying occurring in the workplace. The employer, however, refused to pay the bill, arguing that the seminar was unnecessary because the chairman of the works council had already attended similar training on bullying. The BAG held that the employer had to cover both the cost of the training and the accommodation and food expenses related to attending the seminar.

Elected members of the works council do not need to explain initial training in industrial relations law, general employment law and occupational health and safety and accident prevention. However, there must be current work-related justification for training regarding issues such as bullying. The BAG stated that in deciding on whether training is necessary, the works council has a certain amount of discretion. Training will not be necessary if the relevant knowledge already

exists in the works council. However, this is not the case if the knowledge is concentrated in just one member. Finally, the works council must consider the financial burden of the training on the employer. [Az 7 ABR 95/12]

India: Unification of national employment laws

The central government of India is planning to reduce the number of national employment laws applicable in the country, from 44 to five. The intention is that this will make it easier for companies to do business and to improve compliance with labour legislation.

Under the proposals, laws which are related will be merged to form individual Labour Codes on different aspects of employment law. For example the Minimum Wages Act 1948, the Payment of Wages Act 1936, the Payment of Bonus Act 1965 and the Equal Remuneration Act 1976 will be integrated into a single Labour Code on Wages. In addition, the laws on social security will be combined to form a Code on Social Security; industrial safety and welfare acts will be combined to form a Code on Industrial Safety and Welfare; and Acts such as the Industrial Disputes Act 1947 and the Trade Unions Act 1926 will come together to form the Labour Code on Industrial Relations. The fifth law will be a law for small factories.

The draft codes on wages and industrial relations have already been drafted whilst the remaining laws are expected to be drafted before the end of the year. Once drafted, the new codes will require approval from parliament.

Irish Republic: Court highlights risk of 'making an example' out of an employee

Last month the Irish High Court ordered an employer to reinstate a former employee who had been dismissed in 2009 for breaching company email policy. Under the Unfair Dismissal Acts 1997-2007 such an order entitles the employee to be re-employed in his previous job with the same employment terms and conditions, without a break in his continuity of service, and to receive back pay from the date of dismissal.

The employee in question had been suspended and then dismissed for circulating emails considered to be pornographic, obscene and offensive. Evidence demonstrated that there was a widespread company practice of sending these types of emails; the employer knew about this, but had never taken any disciplinary action prior to the employee's dismissal. In fact, an employee in a senior position had been involved in the circulation of these emails and had not faced any type of investigation.

The Court held that the employee's dismissal was disproportionate and unreasonable and the decision to dismiss was strongly influenced by a desire to 'make an example' of the employee in order to deter others from similar behaviour. The court also stated that if the employer was going to adopt a zero-tolerance policy regarding the circulation of offensive emails then this should have been clearly communicated to all employees.

Furthermore, the Court held that the employee's suspension was not necessary: the employer had already obtained the email evidence and it was considered very unlikely that the employer would continue to send out emails in breach of the policy during the investigation. The Court also took note of the employee's exemplary professional record. [Bank of Ireland v Reilly [2015] IEHC 241]

Japan: High-income professionals to be exempted from working time rules

The Japanese Cabinet has endorsed a draft law that would amend the Labour Standards Act as regards working time for high-income professionals.

Under the proposed law it would be possible to exempt professionals who earn at least 10,750,000 million Japanese yen (90,000 US dollars) per year from working time restrictions. Workers would have the option to either opt in or opt out of the exemption. If they opted in, the worker's salary would remain at a fixed level regardless of the number of hours they worked. The law would affect white-collar workers involved in research, development and financial trading, as well as certain sales representatives.

Estimates from the National Tax Agency demonstrate that approximately 1.85 million workers (4% of private-sector employees) in Japan earn more than the specified threshold. The government aims to introduce this law in April 2016.

New Zealand: Severe penalties for employers who exploit migrant workers

New Zealand's parliament has narrowly approved a new law which will bring severe consequences on employers who exploit migrant workers.

Under the Immigration Amendment Bill (No 2), employers who are found to have exploited temporary migrant workers will face fines of up to 100,000 New Zealand dollars (approximately 76,000 US dollars) or up to seven years in prison. Employers who are in New Zealand on a residence visa could even face deportation if they commit an offence within 10 years of gaining residence.

In addition, the law gives immigration officers the power to search employer's premises. The law follows a series of reports about the rights of foreign workers being abused and in particular not being paid what they are entitled to.

Turkey: Amendments to labour laws now in force

A new law on occupational health and safety came into force in Turkey on April 23rd 2015. The law has made changes in the areas of leave, night work, employer social security contributions and child labour.

As regards leave, male employees now have the right to five days of paid leave upon the birth of their child and employees who have adopted a child have the right to three days of paid leave. Employees who are parent to a child with a 70% disability or a chronic disease, for which they are receiving treatment, are permitted to take ten days of paid leave per year — however, only one of the child's parents can exercise this right.

In terms of night work, the new law permits employees to work at night for more than seven and half hours if they are working in tourism, health or private security services. This is only possible, however, if the employer has obtained the employee's prior written consent.

In addition, under the new law, certain employers will be able to qualify for a 50% reduction in their contribution to unemployment insurance, for a period of three years, if they can show high standards of health and safety in the workplace. In order to benefit from this reduction their workplace must be classified as 'very dangerous'; there must be more than 10 workers employed at the workplace; and there must not have been any occupational accidents that have caused the death or a permanent injury of an employee in the past three years.

Finally, the new law allows children under the age of 14 to be employed for artistic, cultural and advertising activities, provided they do not work for more than five hours per day or 30 hours per week. The employer must also obtain consent from the child's parents for each employment activity.

Pay, Tax and Benefit Trends

BELGIUM: Employer associations and trade unions in Belgium have agreed to extend the list of products and services that may be obtained using eco-cheques. As a result, from June 1st 2015 eco-cheques may be used to purchase items such as second-hand furniture and domestic-use solar panels. For more information on the eco-cheque system in Belgium, please see our HR guidance note 'Belgian eco-cheque system'.

CHINA: On May 1st 2015 the monthly minimum wage in Guangdong, China, increased to 1,895 Renminbi (306 US dollars). This follows recent increases made to minimum wages in other provinces of the country. Since April 1st 2015 the monthly minimum wage in Beijing is 1,720 Renminbi (277 US dollars), in Tianjin it is 1,850 Renminbi (298 US dollars) and in Gansu it is 1,470 Renminbi (237 US dollars).

GREECE: The Ministry of Labour in Greece has announced a two-stage increase in the national minimum wage. The monthly minimum rate will rise to 650 euros in October 2015 and to 751 euros in July 2016. There are also plans to eliminate the reduced minimum wage rate for workers below the age of 25 — currently their monthly minimum wage rate is 75 euros less than the rate for workers aged 25 and over.

ITALY: According to the National Institute of Statistics (ISTAT), in March 2015 the index of hourly contractual wages in Italy remained unchanged as compared to February 2015. Compared with March 2014, however, wages had increased by 1%. The increase in wages

was greatest in telecommunications (3.5%), rubber, plastic and non-metallic mineral processing (3.3%) and in energy and petroleum and mineral extraction (3.0%).

NETHERLANDS: On July 1st 2015 the national monthly minimum wage in the Netherlands will increase. The new minimum wage rate for full-time employees aged 23 or over will be 1,507.80 euros per month.

SOUTH KOREA: The South Korean multinational company, Hyundai Motor Company, is considering changing its pay structure so that its domestic employees are paid wages based on merit, rather than on seniority. This, the company believes, would help reduce rising labour costs. At present, long-standing employees of Hyundai in South Korea can earn nearly twice as much as junior workers performing similar work. They are also paid more than their colleagues in other countries, including the USA. The proposal is likely to face strong resistance from trade unions, but if the multinational company does make such a change to its wage system, other companies may follow their lead.

UAE: From July 1st 2015 companies in the UAE will be able to issue shares as part of an employee share scheme. Under the new Commercial Companies Law, employee share schemes will be permitted provided the terms and conditions of the scheme are in compliance with regulations provided by the Securities and Commodities Authority. The terms must also be approved by the company's shareholders. It is important to note that companies incorporated in free zones do not fall within the scope of application of this new law.

UK: Since April 6th 2015 employment intermediaries in the UK have been subject to new reporting requirements. Employment intermediaries include all businesses that supply workers who personally provide a service to a client. Under the new rules, these

employers are required to submit quarterly reports to HM Revenue & Customs (HMRC) detailing all payments made to workers which have not used the Pay as You Earn (PAYE) system. The first reporting period began on April 6th 2015 and will end on July 5th 2015. Reports should be filed one month from the end of this period, therefore the first report is due on August 5th 2015. Employment intermediaries must use HMRC's report template to create the report. HMRC provides an online service for uploading and sending these reports.

USA: According to the US Bureau of Labor Statistics, in Q1 2015 the median earnings of full-time workers in the USA stood at 808 US dollars per week. This is 1.5% higher than in Q1 2014. Regarding full-time workers aged 25 and over, those not possessing a high school diploma had median earnings of 478 US dollars per week in Q1 2015 whilst those with at least a bachelor's degree earned median wages of 1,227 US dollars per week.

Other Global HR News in Brief

ARGENTINA: Argentina's Chamber of Deputies is currently reviewing a draft law which would provide more generous statutory leave for family care reasons. The draft law seeks to extend paternity leave from two days to 15 days. It would also make changes to maternity leave, adoption leave, rest periods for breastfeeding and protection from dismissal.

EUROPE: In a landmark decision, the European Court of Justice has stated that 'establishment', for the purpose of the EU Collective Redundancies Directive, should be defined as the entity to which the worker is assigned to carry out their work duties. Therefore, only the redundant employees in the relevant entity will be counted towards the threshold for collective redundancy consultation requirements — not all redundant employees across different entities in the

same company. This decision is good news for employers. [Case C-80/14]

EUROPE: The European Commission is seeking the views of EU-level employer and employee representatives on strengthening existing EU legislation on worker information and consultation. The Commission is considering the possibility of consolidating the three EU Directives on collective redundancies, transfers of undertakings and information and consultation of workers. It will also particularly be considering the definitions of the terms 'information' and 'consultation'.

JERSEY: The amount of notice an employee in the UK crown dependency of Jersey must give an employer when terminating their employment has changed as of April 1st 2015. Employees who have been continuously employed by their employer for less than 26 weeks must now provide at least one week of notice. If an employee has worked for more than 26 weeks they must provide at least two weeks of notice and after five years of service they must give at least four weeks of notice. An employee's employment contract may require a higher minimum period of notice.

MACEDONIA: Plans to increase the length of maternity leave from 12 to 15 months in the case of multiple births have been approved by the parliament of Macedonia. These plans will not affect the length of maternity leave in the case of single births.

RUSSIAN FEDERATION: Employers in Russia wishing to hire non-highly qualified specialists and non-CIS nationals in 2016 should be aware that the standard work permit quota application period has now opened. Applications can be filed until July 1st 2015. If an employer fails to obtain an allocation of quota numbers they will be unable to file work permit applications on behalf of foreign workers in 2016. It should be noted that that standard work permit quota

applications must now be accompanied by a letter confirming that, during their assignment, foreign workers will be provided with accommodation and covered by medical insurance.

SINGAPORE: Cases of redundancies have increased in Singapore amid on-going business restructuring. According to figures provided by the Ministry of Manpower there were 11,560 redundancies in 2013 and 12,930 redundancies in 2014. The service industries were the most affected by redundancies in 2014 — particularly the wholesale trade, financial services, retail trade and legal, accounting and management services sectors. In 2014, 67.7% of workers made redundant found employment within 12 months. In 2013 this figure was 65.9%.

TAIWAN: Taiwan's Executive Yuan has approved a number of proposed amendments to the Labour

Standards Act. These amendments include a reduction in the working week from 84 hours per two weeks to 40 hours per week and an increase in the maximum limit on overtime from 46 to 54 hours per month. The Executive Yuan has also approved the extension of the application of a two-day rest period and a reduction in the number of national holidays for private-sector workers from 19 to 12. The proposals still need to be approved by the Legislative Yuan.

USA: A draft law that would prohibit employers from requesting or considering the credit history of a job candidate or employee when making employment decisions has been approved by the New York City Council in the USA. Exceptions to this general prohibition would include circumstances where an employee is involved in maintaining digital security systems. The draft law will enter into force 120 days after being signed by Mayor de Blasio.

Dates for your diary:

June 1st 2015: Extended list of products and services that can be acquired with eco-cheques in **Belgium** comes into force.

June 30th 2015: End of six-month grace period during which employers in **UAE** who have not issued or renewed labour cards will receive reduced fines.

June 30th 2015: End of consultation process on reinforcing **EU** legislation on worker information and consultation.

July 1st 2015: The national minimum wage in the **Netherlands** increases to 1,507.80 euros per month.

Latest news for business travellers:

A six-day rail strike is currently in operation in **Germany**, affecting both regional and long-distance trains. The strike is due to end on Sunday, May 10th at 9am.

Increased levels of violence in the state of Jalisco in **Mexico** on May 2nd and 3rd have resulted in many governments issuing travel warnings. Further clashes between criminal organisations and authorities are possible, therefore all travellers should exercise a high degree of caution when travelling in Jalisco.

Travellers to **Brazil** should be aware that the number of dengue fever cases in the country has increased considerably in 2015, particularly in the south-east and central-west.

The **Philippines** is currently on alert as Typhoon Noul continues to intensify and move towards the country. The typhoon could hit this weekend (May 9th and 10th).

New border checks have been introduced in the **UK**. Transport staff are now registering data about all travellers leaving the UK by commercial air, sea and rail transport. These checks will have the biggest impact on those using cross-channel ferries and the Channel Tunnel.

Various governments from around the world are advising against all non-essential travel to **Nepal** as a result of the 7.8 magnitude earthquake that occurred at the end of April. There are still aftershocks and this may continue for the next few weeks. Additionally, a magnitude 7.2 earthquake struck **Papua New Guinea** on May 7th 2015. A Tsunami warning has been issued in the South Pacific as there have been four strong earthquakes in the area in just one week.

A storm has caused extensive damage in northern **Germany**. Travel has been disrupted due to fallen trees blocking roads and rail lines. More storms are expected in the next few days so travellers are advised to check local weather reports before travelling.

FedEE news:

WEBSITE MAINTENANCE: We apologise for any problems you may have experienced with our website over the past couple of days. We have been transferring our website to a new server and this has caused some unexpected technical issues. These issues are now resolved and full access has been restored.

UPCOMING FEDEE EVENTS: In May and June this year we will be conducting live video interviews with both insiders and legal experts on the topic of whistleblowing. For information on these events please see the [events page](#) on our public website.

FEDEE FELLOWSHIP: The next Fellowship meeting will take place in London on May 21st 2015. If you are a Fellow and have not yet booked your place, contact us now on +44 (0)117 975 8611. For more information about Fellowship and our Fellowship meetings, please contact Cassandra on cassandra.lu@fedee.com.

NEW LAW PROGRAMME PRESENTATIONS: New audio-visual [Law Programme](#) presentations covering employment law in [Mexico](#), [Venezuela](#) and [New Zealand](#) are now available in the FedEE Members' Area. Updated presentations on employment law in [Germany](#), [Poland](#) and [England and Wales](#) are also now live.

NETWORK WITH OTHER FEDEE PROFESSIONALS — AND MORE: Don't forget that FedEE's face-to-face networking community (called butN) is now 'live' and available for free to both members and non-members. This is a good opportunity to meet other professionals — particularly during business trips. Join up today at <http://www.but-n.com>.

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